

Doreen Spears Hartwell, Esq.
dhartwell@lionelsawyer.com
LIONEL SAWYER & COLLINS
300 South Fourth Street #1700
Las Vegas, Nevada 89101
Phone: (702) 383-8888; Fax: (702) 383-8845

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WINDMILL & EASTERN, LLC, a Nevada
limited liability company,

Plaintiff,

v.

SIMON SHAKIB, an individual and as the
trustee of the Nevada K, LLC Defined Pension
Plan; ZANNA SHAKIB, an individual and as
trustee of the Nevada K, LLC Defined Pension
Plan; NEVADA K, LLC, a Nevada limited
liability company, and DOES I through X; and
ROE ENTITIES I through X, inclusive,

Defendants.

Case No.:

COMPLAINT

Plaintiff Windmill & Eastern, LLC alleges as follows:

JURISDICTION

1. This Court has jurisdiction over this action under 28 U.S.C. §1331 based on federal question relating to the applicability of 18 U.S.C. §1001 et seq. ("ERISA").

2. Venue is proper pursuant to 28 U.S.C. §1391(a) and (c) because the individual and corporate defendants both reside in Nevada and the events or omissions giving rise to the claim occurred in Nevada.

PARTIES

3. Plaintiff Windmill & Eastern, LLC, a sole-purpose entity created and wholly-owned by Bank of Nevada, is, and at all times relevant herein was, a Nevada limited liability company with its principal place of business in Clark County, Nevada.

4. Defendant Simon Shakib, a member and manager of Nevada K, LLC, is, and at all

times relevant herein was, a citizen of the State of Nevada residing in resident of Clark County, Nevada.

5. Defendant Zanna Shakib, a member and manager of Nevada K, LLC, is, and at all times relevant herein was, a citizen of the State of Nevada residing in Clark County, Nevada.

6. Defendant Nevada K, LLC, is a Nevada Limited Liability Company and the sponsor of the Nevada K, LLC Defined Pension Plan (the "Plan").

7. Defendants designated herein as Does and Roe Entities are individuals and legal entities that may have an interest in the subject matter of this litigation but whose identity is unknown at this time. Any transactions and the true capacities of Does and Roe Entities are presently unknown to Plaintiff and, therefore, Plaintiff sues said defendants by such fictitious names. Plaintiff will amend its Complaint to assert the true names and capacities of such Doe and Roe Entities when more information has been ascertained.

STATEMENT OF FACTS

8. Defendants Simon Shakib ("Simon") and Zanna Shakib ("Zanna") (collectively the "Shakibs") are the trustees of the Plan formerly known as the Investor Group of Nevada LP Defined Pension Benefit Plan. *See* Trust Agreement Under the Investor Group of Nevada LP Defined Pension Plan, attached as Exhibit 1.

9. The Shakibs are the sole participants of the Plan as indicated by their filings with the Internal Revenue Services from the inception of the plan through 2009. *See* Forms 5500-EZ attached as Ex. 2; *see also* Census Information Requests Forms attached as Ex. 3.

10. The sole alleged asset of the Plan was a certificate of deposit which the Shakibs pledged as security for a \$7,000,000.00 loan.¹ *See* Pledge and Security Agreement ("Pledge Agreement") dated 7/30/07, attached as Ex. 4.

¹ The Pledge Agreement was executed in conjunction with a Promissory Note dated July 30, 2007 and a Construction Loan Agreement of the same date wherein Bank of Nevada agreed to extend the \$7,000,000 loan to Windmill Market, LLC (the "Borrower"), another entity owned by the Shakibs. Borrower defaulted by failing to repay the loan by its maturity date of July 1, 2009. A deficiency action against the Borrower and Guarantor Shakib is currently pending in the Eighth Judicial District Court, Case No. A-10-623070-C.

1 11. The Pledge Agreement, which constitutes a security agreement within the
2 meaning of the Nevada Uniform Commercial Code ("UCC"), was perfected with the Nevada
3 Secretary of State on or about July 31, 2007. *See* UCC Financing Statement, attached as Ex. 5.

4 12. Pursuant to Section 1.1 of the Pledge Agreement, on July 30, 2007, Defendants
5 pledged to Bank of Nevada, its successors and its assigns, a security interest in all of their rights,
6 title and interest in Certificate of Deposit Account Number 3400016756 and all successor and
7 replacement accounts (the "CD"), regardless of the numbers of such accounts or the offices at
8 which such accounts are maintained.

9 13. The CD was titled Nevada K, LLC. *See* CD dated 9/08/06, attached as Ex. 6.

10 14. On or about October 3, 2007, Defendants transferred the CD to account number
11 340010547 and changed the name to Nevada K, LLC Defined Pension Plan. *See* CD date
12 10/3/07, attached as Exhibit 7.

13 15. As of July 2009, Borrower and Simon Shakib have failed to repay the \$7,000,000
14 loan that has matured.

15 16. Plaintiff believes it is entitled to offset the outstanding debt due and owing to it
16 with the CD that was pledged and perfected with the Nevada Secretary of State.

17 17. Defendants contend that the CD they pledged as collateral for the Loan is an asset
18 of an ERISA Plan that could not have been pledged and therefore must be returned to them.

19 18. Plaintiff disagrees and seeks declaratory relief from this Court to determine
20 whether the Plan is an ERISA Plan and whether the CD pledged as collateral under the Pledge
21 Agreement is an asset under an ERISA Plan.

22 19. Defendants' Form 5500-EZ returns for calendar years 2004, 2005, 2006, 2007,
23 and 2008 titled "Annual Return of One-Participant (Owners and Their Spouses) Retirement
24 Plan" indicate that the Shakibs were the sole participants of the Plan.

25 20. Defendants filed Census Information Requests Forms for calendar years 2007 and
26 2008 indicating that they are the sole participants of the Plan.

27 ///

28 ///

DECLARATORY RELIEF CLAIM

21. Plaintiff re-alleges and incorporates all previous paragraphs as though they were fully set forth herein.

22. An actual controversy exists between the parties as to their legal obligations, duties and responsibilities towards one another regarding the Plan assets that were pledged as collateral for the Loan.

23. All rights and obligations of the parties arose out of one series of transactions which can be settled and determined in a judgment in this one action.

24. A declaration of rights, duties and obligations between the parties is a justiciable controversy of adverse legal interests which is ripe for review and declaration by this Court.

25. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this action. Plaintiff seeks recovery its attorney's fees and costs pursuant to the terms of the Pledge Agreement.

26. Plaintiff seeks a declaratory judgment resolving the following issues:

a. Was the Plan governed by ERISA at the time Defendants pledged the CD as security for the \$7,000,000 loan pursuant to the July 2007 Pledge Agreement; and

b. Assuming that the Plan is governed by ERISA, is the CD a protected asset.

26. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this action. Plaintiff seeks recovery its attorney's fees and costs pursuant to the terms of the Pledge Agreement.

WHEREFORE, Plaintiff prays for relief as follows:

1. For a Declaratory Judgment determining whether the Plan at issue in this matter is governed by ERISA;

///

1 2. For a Declaratory Judgment determining whether the CD at issue in this matter is
2 a protected asset under ERISA;

3 3. For attorney's fees incurred herein;

4 4. For costs incurred herein; and

5 5. For such other and further relief as the Court may deem just and proper.

6 LIONEL SAWYER & COLLINS

7
8 /s/ Doreen Spears Hartwell, Esq.

9 Doreen Spears Hartwell, Esq.

10 Nevada State Bar No. 525

11 300 South Fourth St. #1700

12 Las Vegas, Nevada 89101

13 Attorneys for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28